

MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT Civ. Action No. 1:12 CV564-5

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

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BLAKE BEST individually,

Civ. Action No. 1:12 CV564

Honorable Judge: Michael Ryan Barrett,

Honorable Magistrate Judge
Karen L. Litkovitz

Plaintiffs,

SECOND AMENDED
COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF

-against-

MOBILE STREAMS, INC., a
Delaware Corporation,
MOBILE STREAMS, PLC.,
a United Kingdom Corporation,
MOBILEFUNSTER. INC.,
a Delaware Corporation
is a wholly-owned subsidiary
of FUNMOBILE LTD,
a Private Limited Liability Company
Hong Kong Corporation,
an individual; CHRISTIAN
KWOK-LEUN YAU
HEILESEN, an individual;
and JOHN DOES 1-50,

Defendants.

MOTION FOR LEAVE TO FILE SECOND AMENDED

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF Civ. Action No. 1:12 CV564-1

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**SECOND AMENDED COMPLAINT FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff/Pro Se hereby allege on personal knowledge as to allegations concerning myself and on information and belief as to all allegations, as and for this Second Amended Complaint against Defendants Mobile Streams, Inc., Mobile Streams, Plc, Funmobile, Ltd, Mobilefunsters, Inc. and Christian Kwok-Leun Yau Heilesen.

NOW COMES, Plaintiff/Pro Se, I Blake Best, hereby move these Court and respectfully request this Honorable Court grant myself leave to file Second Amended Complaint. The Second Amended Complaint, which supersedes the prior pleadings First Amended Complaint in its entirety. I Plaintiff/Pro Se seek to file a Second Amended Complaint to make corrections to the First Amended Complaint and further add additional claims and revisions as applicable to law.

I. PARTIES

I Plaintiff/Pro Se Blake Best hereinafter ("Best") bring this action against defendants: Mobile Streams, Inc, a Delaware

MOTION FOR LEAVE TO FILE SECOND AMENDED
COMPLAINT FOR PERMANENT INJUNCTION AND OTHER

Corporation and Mobile Streams, Plc, a United Kingdom Corporation collectively hereinafter (“Mobile Streams”). Mobilefunster, Inc., a Delaware Corporation is a wholly-owned subsidiary of Funmobile Ltd., a Private Limited Liability Company. a Hong Kong Corporation collectively hereinafter (“Funmobile”) and individual; Christian Kwok-Leun Yau Heilensen, an Individual hereinafter (“Chris”); and John Does 1-50 hereinafter (“John Does”) (collectively “Defendants”), and alleges as follows:

A. (“Best”) is a resident Of Ohio whom address is 5392 Northbend Road Cincinnati, Ohio 45247;

B. Upon information and belief Defendant Mobile Streams, Inc. (“Mobile Streams”) is a corporation organized under the laws of the state of Delaware with its principle place of business address 247 West 36th Street, New York, New York, 10018. Mobile Streams provides entertainment content, such as music, comedy and other entertainment, to mobile devices. Mobile Streams has appointed Paracorp Incorporation, 2140 S Dupont Hwy, Camden, Kent DE 19934 as its agent for

service of process; Mobile Streams, Inc. is a leading provider of music and other content to mobile phones globally; with over 1.5 million internet subscribers;

C. Upon information and belief Defendant Mobile Streams, Plc

("Mobile Streams UK") is a public limited company organized under the laws of the United Kingdom with its principle place of Business addresses Abacus House 33 Gutter Lane, London, EC2V 8AR, United Kingdom. Mobile Streams UK is a leading provider of music and other content to mobile phones globally; with over 1.5 million internet subscribers;

D. Upon information and belief Defendant Funmobile, Ltd. Is a Private Limited Company with its principle place of business address of 29/F, One Kowloon No 1, Wang Yuen Street, Kowloon Bay, Hong Kong. Funmobile, Ltd is a leading ringtone and content provider which offers entertainment, services to mobile users in Asia, North America and Europe;

E. Upon information and belief Defendant Mobilefunster, Inc. is a Delaware Corporation with its principal place of business address 1555 Chess Drive, Suite 122, in Foster City, California 94404. MobileFunster has appointed Incorporating Services, Ltd., 3500 S Dupont Hwy Dover Kent, Delaware 19901, Mobilefunster, Inc. is a wholly-owned subsidiary of Funmobile, Ltd, with millions of internet subscribers Worldwide;

F. Upon information and belief Defendant Christian Kwok-Leun Yau Heilesen, is the founder and CEO of Funmobile, Ltd. Mobilefunster, Inc. is a wholly-owned subsidiary of Funmobile, Ltd. Upon information and belief, defendant uses the aliases “Henrick Yau”, “HKHY Heilesen”, “Jennie Johnson”, “Jennie Smith”, “Plasticbrunette”, “Plastic-Jennie” “Scomme”, “Henrick Y”, “Henrick Heile”, “SM” and others. Christian Kwok-Leun Yau Heilesen is of Danish nationality whose address is 29/F, One Kowloon No 1, Wang Yuen Street, Kowloon Bay, Hong Kong; He is also the registrant administrative and technical contact of the domain www.funmobile.com and funmobileca.com Exhibits below.

G. Upon information and belief Defendant John Does 1-50, ("Best") is unaware of the true names , address, and capacities of defendants sued herein and therefore sues these defendants by such fictitious names. ("Best") will seek to further amend this complaint to allege their true names address and capacities when ascertained. ("Best") is informed and believes and therefore alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that ("Best") injuries and herein alleged were proximately caused by such defendants. These fictitiously named defendants, together with the named defendants, are herein referred to collectively as ("John Does").

H. . Upon information and belief Defendants ("Funmobile") have undertaken numerous steps to obfuscate their identities including the use of several addresses and aliases such as, Funmobile 88621, Funmobile US, Funmobile 8383 Limited and others.

II. NATURE OF DISPUTE

I Blake Best individually, as author of my copyrighted sound recordings PA 1-633-253, and as a ringtone developer, entities set forth in the caption above (“Best”) or Plaintiff”), through Pro Se, allege, upon information and belief, for my (“Best”) complaint against defendants (“Mobile Streams”) and its affiliates (“Funmobile”), (“Chris”) and (“John Does”) John Does 1-50 as Defendants. Defendants have profited from (“Best”) copyrighted works, with exceptions Defendants (“Mobile Streams”), (“Funmobile”) and (“Chris”) have disregarded cease and desist letters. A growing trend as many artist and musicians such as (“Best”) who currently lack funding to retain counsel, and in many cases many persons or companies who infringe upon works of arts, never get punished because the artist or musicians lacked financial resources to retain counsel in matters related to copyright infringement and other legal matters.

II. INTRODUCTION

1. This is a civil action seeking damages and injunctive relief for Copyright infringement under the United States Copyright Act pursuant to 17 U.S.C § 101 et seq and other claims and allegations as defined herein.

This case was filed because, (“Best”) feels, if nothing is done defendants’ will continue to infringe upon (“Best”) valued copyrighted works and devalue the copyrighted works, for which a U.S. copyright has been obtained number: PA 1-633-253. True and correct copies of this registration are attached hereto as Exhibit A and are incorporated by reference herein.

III. NATURE OF DISPUTE

2. Defendants be it collectively, individually or have some active part to some of the allegations mentioned herein have engaged in a deliberate effort to copyright infringement and committed other acts and violations as outlined herein. Defendants (“Mobile Streams”), in the pre-sale of tens of millions of ringtones downloads through its predecessors grossly underpaying royalties to (“Best”). This is a civil action against Defendants.

3. “AT&T” introduced (“Best”) to (“Mobile Streams”) so that I might have a broader market to my copyrighted sound recordings PA 1-633-253.

4. Defendants (“Mobile Streams”) and (“Funmobile”) have willfully infringed on (“Best”) copyright by selling ringtones without authorization and consent, and Defendants (“Mobile Streams”) , (“Funmobile”), (“Chris”) and (“John Does”) have knowledge of the cease and desist letters which were served on or about August 9, 2009 by Honigman Miller Schwartz and Cohn LLP, and (“Best”) thereby unlawfully profiting from the unauthorized use of (“Best”) sole and most important assets: its ringtones.

5. Indeed, Defendant(s) have sold and have profited from the sale of (“Best”) most highly regarded and expressly restricted musical sound recordings. As a result of Defendants (“Mobile Streams”) obstructive conduct regarding (“Best”) audit rights while their agreements were in full effect, and now that any agreements by Defendants (“Mobile Streams”) have been cancelled. (“Best”) has a right to know the royalties derived from the sales of its ringtones by Defendants, and also as the result of their continued infringement after having receiving cease and desist letters for the unauthorized sales of its valuable copyrights, (“Best”) has been harmed, under pursuant to 17 U.S.C 504(b) and (c).

6. October 4th (“Best”) made another less formal request by electronic means through email to ask (“Mobile Streams”) , (“Funmobile”) and (“Chris”) to remove (“Best”) content. October 5th, 2012, (“Best”) received a response email from (“Funmobile’s) Karen Oei, Senior Vice President of Operations of Funmobile Ltd., (“Paraphrase ”) who indicated that (“Mobile Streams”) provided the content to her company, and my copyrighted sound recordings PA 1-633-253. Noting copyright would be removed immediately . Karen Oei forwarded emails to (“Mobile Streams”) and Funmobile’s (“Chris”). Today the (“Best”) copyrighted sound recordings PA 1-633-253 remains for sell through (“Funmobile”) highly interactive websites.

IV. SUMMARY OF CLAIMS

7. (“Best”), is engaged in ringtones and technology, and based on Defendants conduct have not continued the practice of producing and copyrighting ringtones. Furthermore the sound recordings were recently removed from the

("AT&T") network at ("Best") request. In 2008, while my copyrighted sound recordings PA 1-633-253, was featured in AT&T's "What Hot" it demonstrated popularity with steady sales, which were described by AT&T's Senior VP as good "seeing that while my copyrighted sound recordings PA 1-633-253 is not a known celebrity." ("Best") believe if it was not for the infringement and practices of Defendant ("Mobile Streams"), ("Funmobile") and ("Chris"), ("Best") would have enjoyed tremendous success his copyrighted sound recordings PA 1-633-253. It would seem if ("Best") copyrighted sound recordings PA 1-633-253, sound recording were not popular and had very minimum sales, then why are they still featured for sales, after multiple request for them to be removed preventing the actions set forth in this Complaint? However collectively Defendants delivered ("Best") ringtones to a broad market of wireless carriers with included Canada through a interactive website with the intent to infringe and cause harm..

8. ("Best") sound recordings that can be used as ringtones on customers' cellular phones. "Best", has secured these rights with the United States Copyright Office. Defendants and its affiliates have for years distributed ("Best") copyrighted sound recordings PA 1-633-253. ("Best") Copyrighted Sound Recording PA 1-633-253 are protected under common law trademark, which

serves to identify ("Best") in the marketplace as the source of the works which are unlawfully made available for sale to thousands of subscribers.

V. JURISDICTION VENUE AND PARTIES

9. This is a civil action seeking damages and injunctive relief for Copyright infringement under the Copyright Act, 17 U.S.C. § 101 et seq.

The Court has personal jurisdiction over Defendants because each does systematic and continuous business in Ohio, and has performed acts directed at and causing harm in Ohio which gives rise to this Complaint. Venue is proper in this District pursuant to 28 U.S.C. § 139(b), (c) and 28 U.S.C § 1400(a). This Court has subject matter jurisdiction over plaintiffs' Copyright Act claims under 28 U.S.C. §§ 1331, 1332, and 2201. This Court has personal jurisdiction over Defendants under the test established in *Calder v. Jones*, 465 US 783 (1984), applying Colo. Rev. Stat. § 13-1-124. Venue is proper in this District under 28 U.S.C. § 1391(b). This Court has jurisdiction over the federal claims in this action under the Trademark Laws of the United States, Lanham Act Sections 32, 39, 43(a), and 43 (c)(1), 15 U.S.C. §§

1114, 1121 and 1125(a)(c)(1), the Copyright Act, 17 U.S.C. § 101 et seq. and the Judicial Code of the United States, 28 U.S.C. §§ 1331, 1338(a) and (b). This Court has supplemental jurisdiction over any common law and state statutory claims under 28 U.S.C. § 1367. Defendants by virtue of law outlined above have contact with the state of Ohio through its business dealings and with (“Best”) and their activities through an interactive websites geared to Ohio residents.

10. Further, at all times relevant herein, (“Mobile Streams”), (Funmobile), (“Chris”) individually and (“John Does”) have targeted business efforts into the State of Ohio as outline in Exhibits below. Subsequently (“Best”) had a prior agreement entered into (“Mobile Streams”) whereby (“Best”) is a resident and citizens of the state of Ohio, thus further making this district the proper venue.

Defendants highly interactive e-commerce websites operates to sell goods and services into the state of Ohio, is directed at Ohio residents, and constitutes and substantial connection with the state of Ohio. Therefore,

Defendants has purposely availed itself of the privilege of conducting activities in Ohio. Furthermore, the unauthorized copying and selling of ("Best") copyrighted sound recording arises directly out of the activities of Defendants highly interactive e-commerce websites.

11. ("Best") claims arise out of Defendants Ohio-related activity not excluding email contacts; where discovery of the subscribers and wireless carriers are necessary to further establish that ("Mobile Stream"), ("Funmobile"), ("Chris") and ("John Does") sold ("Best") sound recordings and had contact with the state Ohio as described in (Exhibit B).

12. Jurisdictional arguments can be made: The United Kingdom Defendant and Hong Kong Defendant could necessarily be based on the same facts alleged against their U.S counterparts. The Courts have personal jurisdictional over ("Mobile Streams") through ("Funmobile"), and the Canadian Web site which is an highly interactive website, were conversely, activity occurring entirely outside the United States may give rise to liability under the Copyright Act if it contributes to subsequent direct infringement occurring within the United States, i.e., a violation of one or more of the exclusive rights set forth in 17 U.S.C. § 106.

V. FACTUAL ALLEGATIONS

13. Upon information and belief, (“Best”) developed the sound recording in 2006 developing additional ringtones in 2009 which a United copyright registration numbers: PA 1-633-253. The sound recording copyright protection, pursuant to 17 U.S.C. § 101. (“Best”) is a developer of sound recordings Copyright and registration numbers: PA 1-633-253. Defendant’s are exploiting those rights through various licensing arrangement with third parties websites via the Internet.

14. However (“Best”) is noted as author to the works of the sound recordings mentioned herein, thus allowing (“Best”) to develop various licensing arrangements with third parties namely (“Mobile Streams”) These licensing generated income, where the licensor, songwriters or publishers of the work, should receive royalties. (“Best”) entered into agreements with (“Mobile Streams”) in that (“Best”) would be collecting royalties due on his copyright works.

15. Upon information and belief, (“Best”) developed these ringtones with distribution worldwide through Nickels Group and (“Mobile Streams”), and have yet to enjoy the true revenue from the sales of his ringtones because of what is believe to be industry practices, and exploitation by various ringtones companies by sending (“Best”) licensed ringtones to other predecessors who were not included in the royalty reports provided to the ringtone providers or licensors, in essence the licensor namely (“Mobile Streams”) would enjoy nearly 100% royalty through its affiliates of unreported royalty sales to the licensor.

15. Upon information and belief, the Internet allows enormous opportunities for copyright infringement of artists works and musical compositions to be infringed and exploited. There are countless numbers of websites selling ringtones and songs of copyrighted works, which compensation is never realized by the artist. I (“Best”) believe the industry have a practice “If the artist don’t, know don’t tell”. Allowing some

companies that license musical works to not report the sales to the artists. Now the only way for the artist to learn that their works are being infringed upon, is to do Internet key searches in hopes to uncover evidence of their work being infringed upon. This is what (“Best”) did initially in 2009 and uncovered a vast amount of websites selling my (“Best”) content which was not on the royalty reports provided to by (“Mobile Streams”). At which point, (“Best”) then inquired to (“Mobile Streams”) of this new found evidence of my (“Best”) ringtones being sold on sites not being reported on the royalty reports they provided. Whereby, (“Mobile Streams”) denied any claim that they provided my (“Best”) content to the sites in question. After then retaining counsel who conducted a veracious search and send out Cease and Desist letters to all infringing parties it was then discovered that the content was provided to those parties by (“Mobile Streams”). The expense for this investigation and inquiry amounted to nearly \$20,000 dollars.

16. Upon information and belief, (“Best”) is the owner of copyrights in and to the musical compositions at issue and have complied in all respects with the

copyright acts and with all other applicable laws in securing copyright registrations and protecting and maintaining exclusive rights in and to these (“Best”) Sound Recordings. Upon information and belief, (“defendants”) (“Mobile Streams”) and (“Funmobile”) have unlawfully made thousands from (“Best”) “sound recordings available sale and downloading through its thousands of subscribers.

16. Upon information and belief On or about June 12, 2006, (“Best”) and defendant (“Mobile Streams”) entered into a one-year ringtone license with auto renewed, with the exceptions of cancellation by notice.(the “Ringtone License”) covering the World. Pursuant to the 2006 Ringtone License, (“Best”) granted a license to (“Mobile Streams”) whereby (“Best”) agreed to license its Copyright Sound Recording PA 1-633-253 for which (“Best”) owned and/or controlled the exclusive rights. In accordance with the (“Ringtone License”), (“Best”) granted (“Mobile Streams”) the right to transmit the Copyrighted Sound Recording PA 1-633-253 through its network of internet providers.

The Copyrighted Sound Recording PA 1-633-253 are catalogue are available to

consumers for downloading onto wireless phones. The License agreement was not signed because (“Best”) wanted additional provisions to be added. Meanwhile (“Best”) acted on a verbal agreement, which included (“Best”) receiving royalty reports and payments from (“Mobile Streams”) In return for the grant of rights for approved of the sound recordings, (“Mobile Streams”) was to pay (“Best”) an agreed upon royalty rate for each Copyrighted Sound Recording PA 1-633-253 downloaded by a consumers.

17. Upon Information and belief, (“Mobile Streams”) and/or its affiliates (“Funmobile”). (“Chris”) and (“John Does”) were failing to keep accurate records of the occurring through services, and failed to account property to (“Best”) for the royalties owed. When (“Best”) attempted to exercise its contractual rights to go online to review the royalty report, access was denied. (“Best”) made verbal request to examine the books and reports to (“Mobile Streams”), who refused to give (“Best”) access to material information, interposed frivolous objections to many of (“Best”) request, and provided incomplete and inaccurate documentation.

18. Upon Information and belief, moreover, throughout the term of the license agreements which existed, (“Mobile Streams”) , blatantly and willfully infringed upon (“Best”) numerous valuable copyrights by (i) making (“Best”) ringtones available to predecessors that were not on the royalty report list. (ii) permitting worldwide downloading of “Best” ringtones.

19. Upon Information and belief, In light of (“Mobile Streams”) material breaches of the license agreements, (“Best”) did send email notifications to (“Mobile Streams”) to remove its content in effect cancelling any agreement which may have existed. Although the agreement that existed was unsigned, (“Best”) and (“Mobile Streams”) acted on the agreement by virtue of the royalty checks and royalty reports that were received by (“ Best”). Even after the licensing agreement was expired or cancelled, Defendants continued through (“Funmobile”), (“Chris”) and (“John Does”) to receive revenue from (“Best”) ringtones, thereby reaping an unlawful profit from the exploitation of (“Best”) sound recordings.

A. COUNTS and CAUSES OF ACTION

COUNT I

**(First cause of Action Copyright Infringement
1976, 17 U.S.C. § 101 et Seq.)**

20. (“Best”) repeat, reallege and incorporate herein by reference each and every allegation contained in paragraph 1-19 above. Attached below, Copyrighted Sound Recording PA 1-633-253, snap shot of the willful infringing act, showing titles of the Copyrighted Sound Recording PA 1-633-253 each listed under the copyright registration provided herein, with time and date stamp shown at bottom right corner of picture. This snap showing defendant (“Funmobile”) U.S. and Canadian website.

21. Early August 2009, (“Best”) discovered through an Internet Search of his Copyrighted Sound Recording PA 1-633-253; that various websites were not reported on the (“Mobile Streams”) royalty report. Moreover, these websites (“Funmobile”) and others, were exploiting his work unlawfully offering

("Best") sound recording to thousands of subscribers. ("Best") on or about August 9, 2009 sought counsel to provide to those websites cease and desist letters. These letters would stop these sites from further infringement, whereby requesting that these websites provide evidence of sales of ("Best") sound recording.

("Mobile Steams") was then made aware that any agreements between parties ("Best") , would be cancelled. Whereby, ("Mobile Steams") agreed to such cancellation and was advised to have all content provided to third party providers be removed, and that a sales report outlining sales from these sites of ("Best") sound recording, be provided. After counsel finished their copyright infringement investigation it was made known that ("Mobile Steams") provided these websites in question with ("Best") Copyright PA 1-633-253.

22. It would be understood by one ordinary person that such communications using counsel in this matter should have made ("Mobile Steams") aware that any further sales of ("Best") sound recording by

any of its third party providers affiliates or subscribers would constitute willful infringement. Since this notice the Defendants ("Mobile Streams") and predecessors Defendants ("Funmobile") and ("Chris") have been enjoying a financial profit from the sales of ("Best") sound recording, and have continue its infringement to date, just a few months. Whereby Defendants ("Mobile Streams"), and ("Funmobile") would continue to allow its users and or subscribers to continue to purchase ("Best") Copyright sound recording ringtones PA 1-633-253, free of reprisal. It is ("Best") intention to seek action and relief in his matter so that, this may not continue to happen. Each of Defendants of copyright infringement referenced herein were willful within the meaning of 17 U.S.C. § 101, et seq.

23. ("Best") has been damaged and is entitled to, at their election, either their actual damages and defendant's profits from the infringing activities described herein, or, in the alternative, statutory damages to 17 U.S.C §, et seq. ("Best") are further entitled to their attorney fees and cost pursuant to 17 U.S.C. § 505.

COUNT II

(Second cause of Action Inducement of Copyright Infringement) 17 U.S.C. § 106)

24. (“Best”) repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 23 above. (“Mobile Streams”) and (“Funmobile”) subscribers have directly infringed and are directly infringing (“Best”) copyrights on a daily basis by, for example purchasing reproductions of sound recordings embodying (“Best”) compositions in violation of (“Best”) exclusive rights under the Copyright Act, 17 U.S.C § 106, et seq. The scope of the infringement is massive, encompassing thousands of (“Best”) sound recording (including without limitation those listed in Exhibit B, C). Defendants are liable for inducing the copyright infringement of (“Mobile Streams”), (“Funmobile”) users. Through their interactive website Defendants (“Mobile Streams”) and (“Funmobile”) promote and market the unauthorized copying and transmission of (“Best”) sound recordings, whereby actively facilitating, encouraging and enticing (“Mobile Streams”) and (“Funmobile”) subscribers to engage in the infringement. Indeed, Defendants intend to bring about infringement.

25. Defendants further have induced and continue to induce infringement by, for example, not removing (“Best”) Copyrighted sound recordings and maintaining a business model to profit directly from infringing use, including sales to subscribers through their highly interactive websites. Through the conduct described above, Defendants are liable for inducing the infringement described herein. Each violation of each (“Best”) rights in and to each copyrighted sound recording constitutes a separate and distinct act of copyright infringement. Defendants’ infringement has caused substantial damage to (“Best”). As a direct and proximate result of Defendants’ infringement, (“Best”) are entitled to statutory damages under 17 U.S.C. § 504(c) for each of (“Best”) works that have been infringed through (“Mobile Streams”) and (“Funmobile”). Defendants’ infringement is and has been willful, intentional, purposeful, and in disregard of the rights of (“Best”). The Court should therefore increase the award of statutory damages to up to \$150,000 per infringed.

26. An exemplary list of infringed works is included in Exhibit B and C. The identities of additional infringed works and the total number of infringed works will be determined during discovery, and the pleadings adjusted accordingly. As an alternative to statutory damages (and for infringed works that do not qualify for statutory damages if any), (“Best”) at their election prior to judgment are entitled to recover their actual damages and any additional profits of the Defendants attributable to the infringement. 17 U.S.C. § 504(a) –(b). (“Best”) are entitled to costs, including reasonable attorneys’ fees, pursuant to 17 U.S.C. § 505. Defendants’ conduct has caused, and unless enjoined by this Court, will continue to cause (“Best”) great and irreparable injury that cannot be fully compensated or measured in money. (“Best”) have no adequate remedy to law. Pursuant to 17 U.S.C § 502, (“Best”) is entitled to a permanent injunction prohibiting further infringement of (“Best”) copyrights. At all times relevant to this action, Defendants (“Mobile Streams”), (“Funmobile”) , (“Chris”) and (“John Does”) (i) have had the right and ability to control and/supervise the infringing conduct of (“Fumobile”) subscribers, and (ii) have had a direct financial interest in,

and derived substantial financial benefit from, the infringement of (“Best”) copyrighted sound recordings via (“Mobile Streams”) and (“Funmobile”) interactive websites.

COUNT III

(Second Cause of Action Contributory Copyright Infringement 17 U.S.C § 106)

27. (“Best”) repeat, reallege and incorporate herein by reference each and every allegation contained in paragraph 1 through 26 above. (“Mobile Streams”), (“Funmobile”) and (“Chris”) subscribers purchasing and download (“Best”) sound recording have directly infringed and are directly infringing (“Best”) copyrights on a daily basis by, for example purchasing copying sound recordings embodying (“Best”) copyrighted works in violation of (“Best”) exclusive rights under the Copyright Act, 17 U.S.C. §§106, 501. The scope of the infringement is massive, encompassing thousands of (“Best”) sound recordings (including without limitation those listed in Exhibit A).

28. Defendants are liable as contributory infringers for the copyright infringement committed via Defendants highly interactive website as outline in Exhibits B, C, D below. Defendants have knowledge of the massive infringement that has occurred and continues to occur through (“Funmobile”) highly interactive website, and Defendants have caused, enabled, facilitated, and materially contributed to that infringement. Defendants’ knowledge of infringement is both actual and constructive. Defendants (“Mobile Streams”), (“Funmobile”), (“Chris”) have been served with Cease and Desist letter, and recent emails to remove (“Best”) sound recording. Defendants also have knowledge of these proceeding through Process of Service and have not removed (“Best”) sound recording, which continues to be offered for sale to its thousands of subscribers.

29. Defendants failure to act upon written notice and emails of infringement; Defendants have caused Defendants have caused, enabled, facilitated and materially contribute to the infringement complained herein. Defendants have, in addition to the actions above, provided the tools, support and instructions for the

infringement via Defendants ("Funmobile") interactive website, and has refused to exercise their ability to stop the infringement on ("Best") sound recordings.

Through the conduct described above, Defendants are contributory liable for the infringement described herein. Each violation of each ("Best") rights in and each copyright composition constitutes a separate and distinct act of copyright

infringement. Each violation of each ("Best") rights in and to each copyright sound recording composition constitutes a separate and distinct act of copyright infringement. Defendants' infringement has cause substantial damage to ("Best").

As a direct and proximate result of Defendants' infringement, ("Best") are entitled to statutory damages under 17 U.S.C 504(c) for each of ("Best") works that have infringed through Defendants' ("Mobile Streams"), ("Funmobile"), ("Chris") and ("John Does"). Defendants' infringement is and has been willful, intentional, purposeful, and in disregard of the rights of ("Best"). The Court should therefore

increase the award of statutory damages to up to \$150,000 per infringed. An exemplary list of infringed works is included in Exhibit B and C. The identities of additional infringed works and the total number of infringed works will be determined during discovery, and the pleadings adjusted accordingly. As an alternative to statutory damages (and for infringed works that do not qualify for statutory damages if any), (“Best”) at their election prior to judgment are entitled to recover their actual damages and any additional profits of the Defendants attributable to the infringement. 17 U.S.C. § 504(a) –(b). (“Best”) are entitled to costs, including reasonable attorneys’ fees, pursuant to 17 U.S.C. § 505.

Defendants’ conduct has caused, and unless enjoined by this Court, will continue to cause (“Best”) great and irreparable injury that cannot be fully compensated or measured in money. (“Best”) have no adequate remedy to law. Pursuant to 17 U.S.C § 502, (“Best”) is entitled to a permanent injunction prohibiting further infringement of (“Best”) copyrights.

COUNT IV

(Third Cause of Action Vicarious Copyright Infringement 17 U.S.C § 106)

30. (“Best”) repeat, reallege and incorporate herein by reference each and every allegation contained in paragraph 1 through 29 above. (“Mobile Streams”), (“Funmobile”) and (“Chris”) subscribers purchasing and download (“Best”) sound recording have directly infringed and are directly infringing (“Best”) copyrights on a daily basis by, for example purchasing copying sound recordings embodying (“Best”) copyrighted works in violation of (“Best”) exclusive rights under the Copyright Act, 17 U.S.C. §§106, 501. The scope of the infringement is massive, encompassing thousands of (“Best”) sound recordings (including without limitation those listed in Exhibit A). Defendants are liable as vicarious infringers for the copyright infringement committed via Defendants highly interactive website as outline in Exhibits B, C below.

31. At all times relevant to this action, Defendants (i) have had the right and ability to control and/supervise the infringing conduct of (“Fumobile”) subscribers, and (ii) have had a direct financial interest in, and derived substantial financial benefit from, the infringement of (“Best”) copyrighted sound recordings via (“Mobile Streams”) and (“Funmobile”) interactive websites. Defendants’ ability to supervise and control the infringing activities of (“Mobile Streams”) and (“Funmobile”) subscribers through their websites is further evidenced by the facts alleged in herein. Defendants’ (“Mobile Streams”), (“Fumobile”) and (“Chris”) have derived direct and substantial benefit from infringement, including offering for sale on their website, the value of which is based essentially on subscribers could purchase and download (“Best”) sound recording. The financial benefit derived by Defendants’ is further evidenced by the facts alleged in herein. Through the conduct described above, Defendants are vicariously liable for the infringement described herein. Each violation of each of (“Best”) rights in and to each copyright sound recordings composition constitutes a

separate and distinct act of copyright infringement. Defendants' infringement has caused substantial damage to ("Best"). As a direct and proximate results of Defendants' infringement, ("Best") are entitled to statutory damages under 17 U.S.C. 504(c) for each of ("Best") works that have been infringed through ("Best") copyright sound recording. Defendants' infringement is and has been willful, intentional, purposeful, and in disregard of the rights of ("Best"). The Court should therefore increase the award of statutory damages to up to \$150,000 per infringed. An exemplary list of infringed works is included in Exhibit B and C. The identities of additional infringed works and the total number of infringed works will be determined during discovery, and the pleadings adjusted accordingly. As an alternative to statutory damages (and for infringed works that do not qualify for statutory damages if any), ("Best") at their election prior to judgment are entitled to recover their actual damages and any additional profits of the Defendants attributable to the infringement. 17 U.S.C. § 504(a) –(b). ("Best") are entitled to costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

Defendants' conduct has caused, and unless enjoined by this Court, will continue to cause ("Best") great and irreparable injury that cannot be fully compensated or measured in money. ("Best") have no adequate remedy to law. Pursuant to 17 U.S.C § 502, ("Best") is entitled to a permanent injunction prohibiting further infringement of ("Best") copyrights.

COUNT V

(Fourth Cause of Action Common Law Copyright Infringement)

31. ("Best") repeat, reallege and incorporate herein by reference each and every allegation contained in paragraph 1 through 30 above Copyrighted Sound Recording PA 1-633-253, which is copyright protected is subject to common law copyright protection under Ohio. As the owner of valid common law copyrights in for the Copyrighted Sound Recording PA 1-633-253, ("Best") possesses the exclusive rights to sell, copy, distribute and perform these sound recordings. The

infringement of (“Best”) rights by Defendants (“Mobile Streams”), (“Funmobile”) in each of its sound recording constitutes a separate and distinct act of infringement. As a direct and proximate result of defendants violation of (“Best”) rights in and to the Sound Recordings, (“Best”) has suffered damages in an amount to be proven at trial. (“Best”) is entitled to recover all proceeds and other compensation received or to received by defendants arising from its infringement of (“Best”) sound recording, and is entitled to an accounting to ascertain the amount of such profits and compensation. Defendant acts of infringement are willful, intentional and purposeful, in disregard of (“Best”) rights, and (“Best”) is entitled to punitive and statutory damages in addition to actual damages. (“Best”) is further entitled to their attorney fees and cost pursuant to 17 U.S.C§ 505. (“Mobile Streams”), (“Funmobile”) and (“Chris”) subscribers purchasing and download (“Best”) sound recording have directly infringed and are directly infringing (“Best”) copyrights on a daily basis by, for

example purchasing copying sound recordings embodying (“Best”) copyrighted works in violation of (“Best”) exclusive rights under the Copyright Act, 17 U.S.C. §§106, 501. The scope of the infringement is massive, encompassing thousands of (“Best”) sound recordings (including without limitation those listed in Exhibit A).

COUNT VI

(Fifth Cause of Action Breach of Contract Ohio Revised Code Section 2305.06)

32. (“Best”) restates and incorporates each of the preceding paragraphs as if fully set forth herein. (“Best”) satisfied all of its obligations under the Agreement requesting that the agreement between the parties be cancelled in lieu of the infringement act by the parties. The use by (“Mobile Streams”) and its predecessors (“Funmobile”) beyond the scope of use described in the (“Mobile Streams”) agreement was unauthorized and constituted a material breach of the

agreement whereby. (“Best”) has sustained damages as a result of the copyright breach of contract by (“Mobile Streams”) and their predecessors (“Funmobile.”)

33. WHEREFORE, (“Best”) prays for findings of breach of contract and judgment in its favor and against defendant (“Mobile Streams”) and its affiliates (“Funmobile”) failing to keep accurate records of the downloading occurring through their services and failed to account property to (“Best”) for the royalties owned. When (“Best”) then attempted to exercise its contractual rights to examine (“Mobile Streams”) books and records (“Mobile Streams”) refused to give (“Best”) access to material information, interposed frivolous objections to many of (“Best”) request, and provided incomplete and inaccurate documentation.

34. (“Best”) performed its duties to the agreement prior to these allegations.

35. (“Best”) has been injured by Defendants’ (“Mobile Streams”) breaches in an amount to be proven at trial.

COUNT VII

(Six Cause of Action Federal Unfair Competition Under Lanham Act, 15.U.S.C. §125(a))

36. 15 U.S.C §1125 (a) (“Best”) incorporates each and every allegation of paragraph 1-57 of this complaint as through fully set forth herein. Defendants’ (“Mobile Streams”) and its affiliates (“Funmobile”) use of Blake Best Copyrighted Sound Recording PA 1-633-253, in connection unlawfully and infringing sales of thousands of downloads. Defendants (“Mobile Streams”) and (“Funmobile”) have infringed upon the sound recordings of (“Best”) after being aware of any agreements upon the parties, which have been cancelled, and cease and desist letters were made a party to this action, with the knowledge of infringement being made known to (“Best”) , who then refrained from further development of the brand name Sound Recordings. These infringement acts damaged the good will of the name herewith. These actions allowed defendants

(“Mobile Streams”), (“Funmobile”) to gain an unfair competitive advantage over (“Best”) continued development of any additional sound recordings.

37. The acts of defendants (“Mobile Streams”), (“Funmobile”) and (“Chris”) alleged above were committed willfully, with knowledge of (“Best”) rights and with the intention to deceive and mislead plaintiff and the public. The acts of defendants (“Mobile Streams”), (“Funmobile”) and (“Chris”) alleged above were committed willfully, with full knowledge of (“Best”) rights with the intention of causing harm to (“Best”). The acts of defendants (“Mobile Streams”), (“Funmobile”) and (“Chris”) alleged above were committed willfully, with full knowledge of (“Best”) rights with the intention of misappropriating and wrongfully receiving revenue for the works of the Sound Recordings of (“Best”) which effected the valuable goodwill and reputation of (“Best”) Copyrighted Sound Recording PA 1-633-253. (“Best”) have suffered economic damage and irreparable harm as a result of unfair competition in its practice and deceptive use of the Copyrighted Sound Recording PA 1-633-253.

38. (“Best”) is entitled to, at their election, either their actual damages and in the alternative, statutory and punitive damages.

39. (“Best”) is further entitled to their attorney fees and cost pursuant to 17 U.S.C. § 504.

COUNT VIII

(Seventh Cause of Action Unfair Competition Under Ohio Law)

40. (“Best”) incorporates each and every allegation of Paragraphs 1-61 of this Complaint as though fully set forth herein. Defendant’s (“Mobile Streams”), (“Funmobile”) use of the Copyrighted Sound Recording PA 1-633-253, after having had full knowledge of Cease and Desist Letters, was unlawfully and a willful act. The conduct of defendants, as alleged herein, constitutes unfair competition under the common law of Ohio.

41. Defendants’ (“Mobile Streams”), (“Funmobile”) and (“Chris”) conduct has been deliberate and willful and has been committed with the intent to

evade paying royalties to (“Best”) who has suffered economic damage and irreparable harm as a result of defendants unfair practices associated herein.

(“Best”) are entitled to, at their election, either their actual damages or, in the alternative, punitive and statutory damages. (“Best”) are further entitled to their attorney fees and cost pursuant to 17 U.S.C. § 504.

COUNT IX

(Eight Cause of Action Deceptive and Unfair Trade Practices Under Ohio Law Ohio Rev. Code, § 4165.02)

42. (“Best”) incorporates each and every allegation of Paragraphs 1-63 of this Complaint as though fully set forth herein. Upon information and belief, throughout our dealings (“Mobile Streams”) knowingly and intentionally provided royalty statements to (“Best”), in which the reported number of downloads of (“Best”) were significantly less than the true number of downloads.

43. Upon information and belief, (“Mobile Streams”) knowingly and intentionally provided royalty statements to (“Best”) that failed to account for downloads occurring Worldwide;

44. (“Mobile Streams”) therefore falsely reported to (“Best”) the number of downloaded Copyrighted Sound Recording PA 1-633-253, within the licensed territories and worldwide, as well as the amount of royalties paid to (“Best”);

45. Upon information and belief, (“Mobile Streams”) knowingly and intentionally provided a false royalty report of the Copyrighted Sound Recording PA 1-633-253; however it was later discovered through infringement investigation t that (“Mobile Streams”) also provided the Copyrighted Sound Recording PA 1-633-253 to providers not listed on the royalty report. Results infringement investigation. Based upon the infringement investigation of third party websites

unlawfully selling plaintiffs copyrighted ringtones, defendant (“Mobile Streams”) was receiving royalties due plaintiff. In fact defendant (“Mobile Streams”) failed to report for 5 third party websites and one such third party website, indicated in paraphrase (“Mobile Streams”) provided us with your content.” Whereby evidence will show that (“Mobile Streams”) earlier indication that this third party’s website was not their authorized content distributor.

46. A result of this deceptive and unfair trade practices under Ohio law, (“Best”) has been damaged in an amount to be determined at trial, plus punitive damages and interest. (“Best”) is further entitled to their attorney fees and cost pursuant to 17 U.S.C. § 504.

COUNT X
(Ninth Cause of Action
Unjust Enrichment)

47. (“Best”) repeat, reallege and incorporates herein by reference each and every allegation contained in Paragraphs 1-63 above. Defendant (“Mobile Streams”), (“Funmobile”) and (“Chris”) was unjustly enriched at (“Best”) expense

under circumstances such that equity and good conscience require Defendants to make restitution to (“Best”). (“Best”) became creditors of Defendants when Defendants committed torts against (“Best”).

A. Prayer for Relief

WHEREFORE, (“Best”) respectfully pray for judgment against the Defendants’ as follows:

- (a) for injunctive relief requiring that Defendants and Defendants’ agents, servants, employees, officers, attorneys, successors, licenses, partners, and assigns, and all persons acting in concert or participation with each or any of them, cease infringing, whether directly or indirectly, and cease causing, enabling, facilitating, encouraging, promoting, inducing, contributing to, and participating in the infringement of any of (“Best”) respective copyrights or exclusive rights protected by Copyright Act whether now in existence or hereinafter created;
- (b) as to the First, Second, Third, Causes of Action, for maximum statutory damages pursuant to 17 U.S.C. § 504(c) , specifically, \$150,000 per work with respect to each and every other timely registered sound recording owned by (“Best”) that was infringed, if any;
- (c) as to the First, Second, Third Causes of Action, as an alternative to statutory damages at (“Best”) election prior to final judgment, for an accounting of Defendants’ profits attributable to the infringement to be provided by Defendants pursuant to 17 U.S.C. § 504(b), and for payment of such and (“Best”) actual damages suffered from infringement;

- (d) as to the Fourth, Fifth, Sixth, Seven, Eight, Ninth and Tenth Causes of Action, restitution and construction trust;
- (e) for prejudgment and post judgment interest;
- (f) for (“Best”) cost and disbursements in this action, including reasonable attorneys’ fees; and
- (g) such further and other relief as may be just and proper.

B. Jury Demand

(“Best”) respectfully requests a trial by jury on all issues triable thereby.

Date this 30th day of November, 2012.

Respectfully and humbly submitted,

Signature

Date

Blake Best **Pro Se**
5392 Northbend Road
Cincinnati, Ohio 45247
513-768-2282
blake@bcs24hrs.com

EXHIBIT A.
(Copyright Registration PA 1-633-253)

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

PA 1-633-253

Effective date of
registration:

June 17, 2009

Title

Title of Work: Slangtones

- Contents Titles:
1. Pick up It's The little
 2. What's Crackalackin
 3. Its yo baby ma
 4. Hey Shorty It's yo girl calling
 5. Thats that brozd Ga Guy
 6. Pickup The Phone Daddy Oh Girl
 7. Pick up Gangster Oh Girl
 8. No Restricted Calls Ga Guy
 9. I Got The Hingerie
 10. Pickup Ganster Oh Girl
 11. Im Feeling You Oh Girl
 12. Pick That Thang Up Ga Guy
 13. Spanish Guy 1
 14. Pickup The Phone Playa
 15. Spanish Guy 2
 16. The Battle
 17. You Dirty Pick Up the Phone Ohio Girl
 18. Mommy Pick Up
 19. This Yo Boy Oh Guy
 20. Lady You Home
 21. Hear You Getting That Money Oh Girl
 22. Im In Love With A Stripper
 23. DaDa Baby Boy
 24. What Crackalackin

Page 1 of 3

25. This Yo Boy
26. You Been Served Oh Guy
27. You Sleeping To Hard
28. You On That One Way Oh Guy
29. Im In Love With A Stripper
30. Whatup Dude MI Guy
31. You Been Served Pick it up MI Girl
32. Thats that broad Ga Guy
33. Shorty Pickup MI Guy
34. Smoking On Piff
35. Baby Slang
36. You Have An Important Call
37. Pick This Piece Up
38. My Street Life
39. 911
40. Big Mama House

Completion/ Publication

Year of Completion: 2003

Date of 1st Publication: June 20, 2006

Nation of 1st Publication: United States

Author

Author: Blake Best

Author Created: sound recording

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Slangtones

6063 Town Vista Drive, Cincinnati, OH, 45247, United States

Transfer Statement: By written agreement

Rights and Permissions

Organization Name: BCS Worldwide/Slangtones

Name: Blake Best

Email: blake@bcs24hrs.com

Telephone: 513-489-6400

Address: 5392 Northbend Road

Cincinnati, OH 45246 United States

Certification

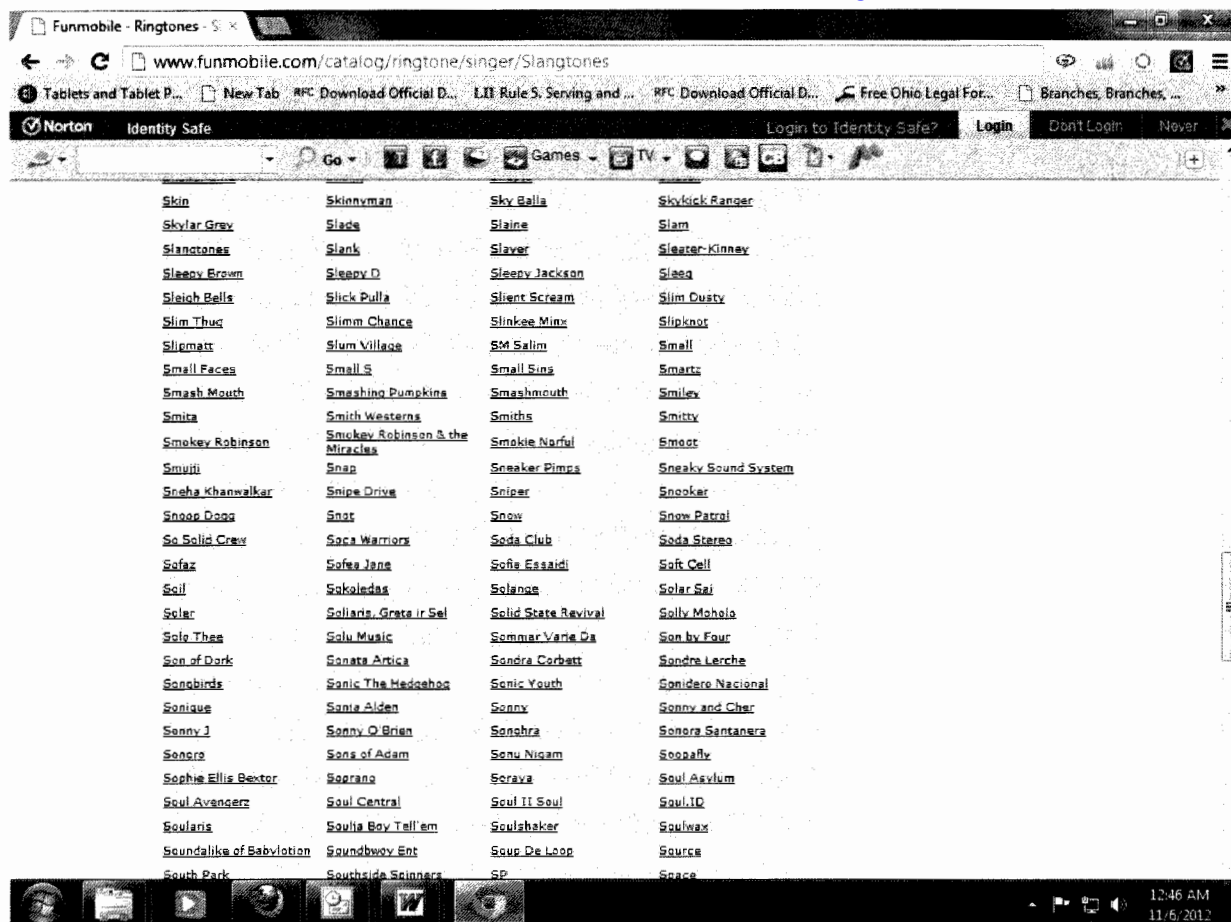
Name: Blake Best

Date: January 13, 2009

EXHIBIT B.
(“Funmobile’s U.S. website)



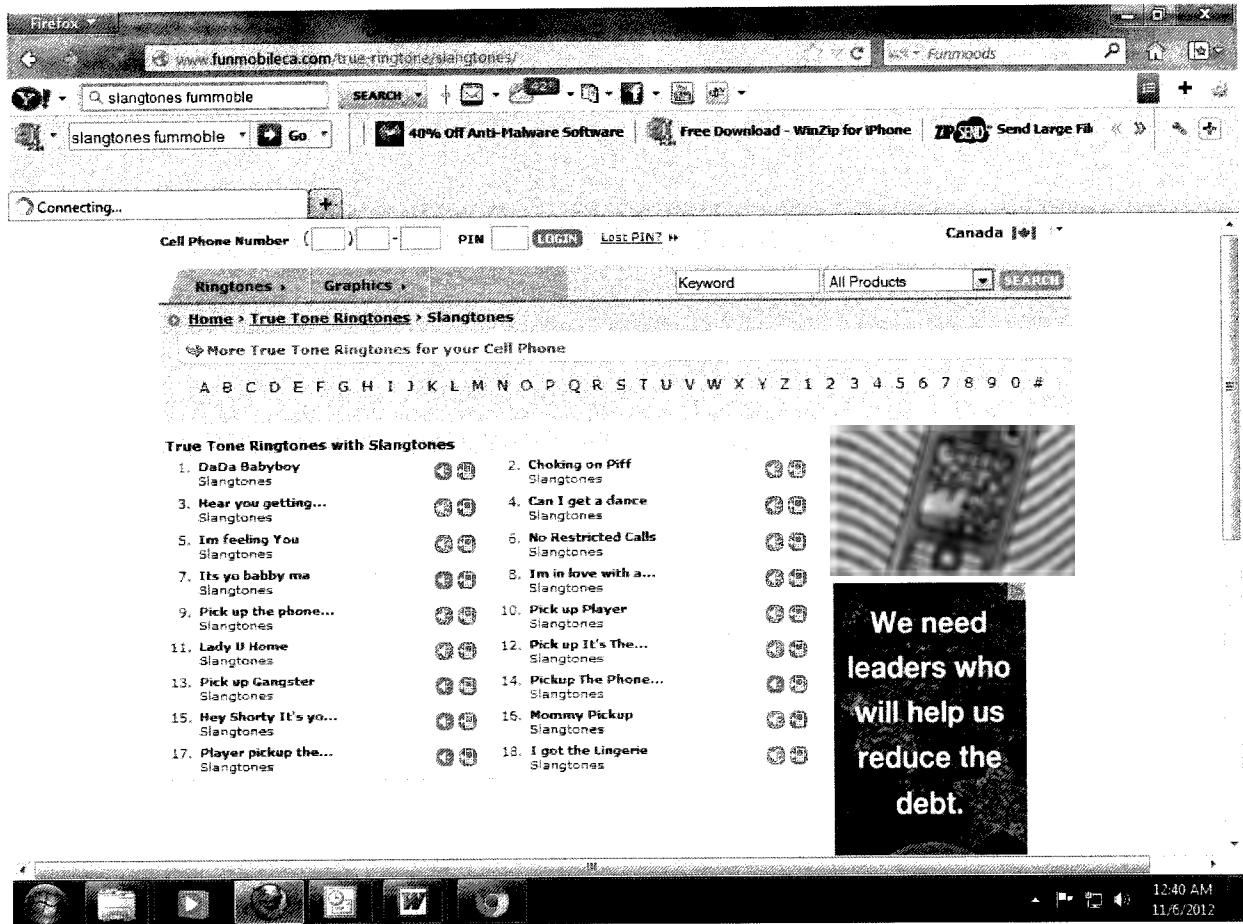
MOTION FOR LEAVE TO FILE SECOND AMENDED
COMPLAINT FOR PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF Civ. Action No. 1:12 CV564-50



MOTION FOR LEAVE TO FILE SECOND AMENDED
COMPLAINT FOR PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF Civ. Action No. 1:12 CV564-51

EXHIBIT C.
("Funmobile" Canadian website)

MOTION FOR LEAVE TO FILE SECOND AMENDED
COMPLAINT FOR PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF **Civ. Action No. 1:12 CV564-52**



MOTION FOR LEAVE TO FILE SECOND AMENDED
COMPLAINT FOR PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF Civ. Action No. 1:12 CV564-53

EXHIBIT D
("Mobile Streams Carriers"
placing them in the State of Ohio)

Funmobile - Text - Funbt...

www.funmobile.com/catalog/text/funbt%20joke%20club

Tablets and Tablet P... New Tab RFC Download Official D... LII Rule 5, Serving and... RFC Download Official D... Free Ohio Legal For... Branches, Branches, ...

Go

Games TV

Funmobile will send your password via SMS to this cell phone number.

☐ Yes, I have read the [Terms of Service](#).

CONTINUE ➔

I agree and acknowledge that I am subscribing to and you must be the account holder or have permission from the account holder to use this service and incur this fee or authorize all purchases to Funmobile's Joke subscription service, either by entering my cell phone number and the PIN Code that was sent to the cell phone supplied by you on this website and clicking the "Submit" button, or by replying to the text message sent by Funmobile to such cell phone with the word "Yes", pursuant to which I will receive a Joke three times per week. I am also confirming that I have read and understood the [Terms and Conditions](#) and [Privacy Policy](#), and I agree to be legally bound by the [Terms and Conditions](#) and [Privacy Policy](#). I represent that (1) I am at least eighteen (18) years of age AND (2) I am of legal age to agree to the [Terms and Conditions](#) and [Privacy Policy](#), or I have my parent's permission to use and register on this website. Please note that you must be 18 or older to participate in this offer. If my carrier is **AT&T, CENTENNIAL WIRELESS**, I will be charged a service fee of **\$5.99 weekly** for which I will receive a joke 3 times a week. If my carrier is **AT&T, CINCINNATI BELL, SPRINT PCS AND T-MOBILE**, I will be charged a service fee of **\$9.99 monthly** for which I will receive a joke 3 times a week. If my carrier is **VERIZON WIRELESS**, I will be charged a service fee of **\$9.99 monthly** for which I will receive a joke 3 times a week. If my carrier is **BOOST**, I will be charged a service fee of **\$6.99 monthly** for which I will receive a joke 3 times a week. This fee will automatically be billed to, or deducted from, the mobile account or the prepaid balance until I send "STOP" to 99621, or to the initial confirmation message sent to me, to terminate the subscription at anytime; and I confirm that I hold the account corresponding to the mobile phone number that I have entered. Unused credits will not be rolled over to next month. Message and Data Rates May Apply. To cancel your subscription, text message the word "STOP" to 99621 at anytime. For customer support, please send e-mail to sara@funmobile.com or call 1-877-258-9064. For help, send "HELP" to 99621. All contents are provided by MobileFuster Inc.

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